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Attorneys for Plaintiff and Counter-Defendant
 COMMONWEALTH ANNUITY AND LIFE INSURANCE
 COMPANY f/k/a ALLMERICA FINANCIAL LIFE INSURANCE
 AND ANNUITY CO.,

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

COMMONWEALTH ANNUITY AND
 LIFE INSURANCE COMPANY f/k/a
 ALLMERICA FINANCIAL LIFE
 INSURANCE AND ANNUITY CO.,

Plaintiff,

vs.

JOHN DALESSIO; RITA DALESSIO; and
 the DALESSIO FAMILY 2003 TRUST,

Defendants.

Case No. CV 08 1739 EDL

Answer to Counterclaim

JOHN DALESSIO; RITA DALESSIO and the
 DALESSIO FAMILY (2003) TRUST,

Counter-Claimants,

vs.

COMMONWEALTH ANNUITY AND LIFE
 INSURANCE COMPANY f/k/a ALLMERICA
 FINANCIAL LIFE INSURANCE AND ANNUITY
 COMPANY, a Delaware corporation; DAVID
 SHANE, an individual; VAUGHN R. WALKER,
 an individual; ANN SPARKMAN, an individual;
 and DOES 1 through 20,

Counter-Defendants.

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Plaintiff and counter-defendant COMMONWEALTH ANNUITY AND LIFE INSURANCE COMPANY f/k/a ALLMERICA FINANCIAL LIFE INSURANCE AND ANNUITY CO. [hereafter referred to as "Allmerica"] by and through its counsel herein, for itself, alone, and no other defendant, submits the following Answer to the unverified Counterclaim of counter-claimants John Dalessio ["hereafter referred to as "John Dalessio"], Rita Dalessio [hereafter referred to as "Rita Dalessio"] and the Dalessio Family (2003) Trust [hereafter referred to as "Dalessio Family Trust"] [hereafter collectively referred to as the "counter-claimants"], as follows :

Answer

Jurisdiction and Parties

1. Answering Paragraph 26, Allmerica denies the allegations contained therein.

2. Answering Paragraph 27, Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, denies the same.

3. Answering Paragraph 28, Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, denies the same.

4. Answering Paragraph 29, Allmerica admits the allegations contained therein.

5. Answering Paragraph 30, Allmerica admits that David Shane is a California resident. Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations contained therein and, therefore, denies the same.

6. Allmerica is not able to respond to Paragraph 31 since there is no Paragraph 31 contained in the Counterclaim.

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Count One

7. Answering Paragraph 32, Allmerica hereby repeats and incorporates its responses to Paragraphs 26 through 31 of said Counterclaim as if fully set forth herein.

8. Answering Paragraph 33, Allmerica admits that statements made in an application did not accurately describe his health and that the policy contained certain terms which speak for themselves. Except as expressly admitted herein Allmerica denies the remaining allegations contained therein.

9. Answering Paragraph 34, Allmerica admits that there was a jury trial in 2006. Except as expressly admitted herein Allmerica denies the remaining allegations contained therein.

10. Answering Paragraph 35, Allmerica denies that Dalessio's first request to delay anything was when he sought to delay the trial. As to the remaining allegations Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, denies the same.

11. Answering Paragraph 36, Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, denies the same.

12. Answering Paragraph 37, Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, denies the same.

13. Answering Paragraph 38, Allmerica admits that Judge Walker ordered that witnesses be excluded from the courtroom. Except as expressly admitted herein Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein and, therefore, denies the same.

14. Answering Paragraph 39, Allmerica denies the allegations contained therein.

15. Answering Paragraph 40, Allmerica denies the allegations contained therein.

16. Answering Paragraph 41, Allmerica denies the allegations contained therein.

17. Answering Paragraph 42, Allmerica admits that certain post trial motions were filed. Except as expressly admitted herein Allmerica denies the remaining allegations contained therein.

18. Answering Paragraph 43, Allmerica is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein concerning why Dalessio chose to settle and what he did with “certainty.” and, therefore, denies the same. As to the remaining allegations contained in this paragraph Allmerica denies them.

19. Answering Paragraph 44, Allmerica denies the allegations contained therein.

20. Answering Paragraph 45, Allmerica denies the allegations contained therein.

21. Answering Paragraph 46, Allmerica denies the allegations contained therein.

22. Answering Paragraph 47, Allmerica denies the allegations contained therein.

23. Answering Paragraph 48, Allmerica denies the allegations contained therein.

Count Two

24. Answering Paragraph 49, Allmerica hereby repeats and incorporates its responses to Paragraphs 26 through 48 of said Counterclaim as if fully set forth herein.

25. Answering Paragraph 50, Allmerica denies the allegations contained therein..

26. Answering Paragraph 51, Allmerica denies the allegations contained therein.

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1 27. Answering Paragraph 52, Allmerica denies the allegations contained
2 therein.

3 **Count Three**

4 28. Answering Paragraph 53, Allmerica hereby repeats and incorporates
5 its responses to Paragraphs 26 through 52 of said Counterclaim as if fully set forth herein.

6 29. Answering Paragraph 54, Allmerica admits the that the parties entered
7 into a settlement agreement. The terms of the settlement agreement speak for themselves.
8 As to the remaining allegations contained in this paragraph Allmerica denies them.

9 30. Answering Paragraph 55, Allmerica admits that Dalessio did pay
10 \$165,000 as set forth in the settlement agreement. As to the remaining allegations contained
11 in this paragraph Allmerica denies them. e allegations contained
12 therein.

13 31. Answering Paragraph 56, Allmerica denies the allegations contained
14 therein.

15 32. Answering Paragraph 57, Allmerica denies the allegations therein
16 contained.

17 **Count Four**

18 33. Answering Paragraph 58, Allmerica hereby repeats and incorporates
19 its responses to Paragraphs 26 through 57 of said Counterclaim as if fully set forth herein.

20 34. Answering Paragraph 59, Allmerica denies that an entity known as
21 Allmerica Financial Corporation, Inc. ever existed. Allmerica admits that Allmerica Financial
22 Corporation is now known as The Hanover Insurance Group, Inc. ("THG"), which is a
23 Delaware corporation with its principal place of business in Worcester, Massachusetts. THG
24 is a publicly traded holding company which does not transact business on its own. Except as
25 expressly admitted herein Allmerica denies the remaining allegations contained therein.

26 35. Answering Paragraph 60, Allmerica Financial Life Insurance Company
27 (n/k/a Commonwealth Annuity and Life Insurance Company) was at one time, but is no
28 longer, a wholly owned subsidiary of Allmerica Financial Corporation (n/k/a The Hanover

1 Insurance Group, Inc.). Except as expressly admitted herein Allmerica denies the remaining
2 allegations contained therein.

3 36. Answering Paragraph 61, Allmerica admits that Allmerica Financial
4 Life Insurance and Annuity Company's name was changed from SMA Life Assurance
5 Company in or about 1995. Except as expressly admitted herein, Allmerica denies the
6 remaining allegations contained therein.

7 37. Answering Paragraph 62, Allmerica denies the allegations contained
8 therein.

9 38. Answering Paragraph 63, Allmerica admits that Dalessio met with
10 agent Gong in March 1988 and that a policy was purchased. Except as expressly admitted
11 herein, Allmerica is without knowledge or information sufficient to form a belief as to the
12 truth or accuracy of the allegations contained therein and, therefore, denies the same.

13 39. Answering Paragraph 64, Allmerica states that the policy speaks for
14 itself. Except as expressly admitted, Allmerica is without knowledge or information
15 sufficient to form a belief as to the truth or accuracy of the allegations contained therein and,
16 therefore, denies the same.

17 40. Answering Paragraph 65, Allmerica admits that Dalessio signed an
18 authorization that speaks for itself. Except as expressly admitted, Allmerica is without
19 knowledge or information sufficient to form a belief as to the truth or accuracy of the
20 allegations contained therein and, therefore, denies the same.

21 41. Answering Paragraph 66, Allmerica admits that there was a medical
22 examination. Except as expressly admitted herein, Allmerica denies the allegations
23 contained therein.

24 42. Answering Paragraph 67, Allmerica denies the allegations contained
25 therein.

26 43. Answering Paragraph 68, Allmerica admits that a request was made to
27 Dr. Cornfield; the contents of such request speaks for itself. Except as expressly admitted,
28 Allmerica is without knowledge or information sufficient to form a belief as to the truth or

1 accuracy of the allegations contained therein and, therefore, denies the same.

2 44. Answering Paragraph 69, Allmerica denies the allegations therein
3 contained.

4 45. Answering Paragraph 70, admits that a request was made for financial
5 information. Except as expressly admitted, Allmerica is without knowledge or information
6 sufficient to form a belief as to the truth or accuracy of the allegations contained therein and,
7 therefore, denies the same.

8 46. Answering Paragraph 71, Allmerica is without knowledge or
9 information sufficient to form a belief as to the truth or accuracy of the allegations contained
10 therein and, therefore, denies the same.

11 47. Answering Paragraph 72, this allegation is in conflict with statements
12 by Dalessio. Allmerica is without knowledge or information sufficient to form a belief as to
13 the truth or accuracy of the allegations contained therein and, therefore, denies the same.

14 48. Answering Paragraph 73, Allmerica admits that annual premiums were
15 paid. Except as expressly admitted, Allmerica denies the allegations contained therein.

16 49. Answering Paragraph 74, Allmerica denies the allegations therein
17 contained.

18 50. Answering Paragraph 75, Allmerica denies the allegations therein
19 contained.

20 51. Answering Paragraph 76, Allmerica denies the allegations therein
21 contained.

22 52. Answering Paragraph 77, Allmerica admits that Dalessio provided
23 answers to health questions. Such form speaks for itself. Except as expressly admitted,
24 Allmerica denies the allegations contained therein.

25 53. Answering Paragraph 78, Allmerica admits that Karen Love has made
26 certain claims, the truth of which are disputed. Except as expressly admitted, Allmerica
27 denies the allegations contained therein.

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1 54. Answering Paragraph 79, Allmerica admits that Dalessio identified Dr.
2 Cornfield as his treating physician. Allmerica is without knowledge or information sufficient
3 to form a belief as to the truth or accuracy of how Dalessio was referred to Dr. Cornfield or
4 what was contained in the psychiatrist's notes, and therefore, denies the same. Except as
5 expressly admitted or not known, Allmerica denies the allegations contained therein.

6 55. Answering Paragraph 80, Allmerica admits that Dalessio purchased a
7 policy from SMA the terms of which speak for themselves. Allmerica admits that Dalessio
8 purchased other policies. Except as expressly admitted, Allmerica denies the allegations
9 contained therein.

10 56. Answering Paragraph 82, Allmerica admits that Dalessio claims to
11 have a distinguished career as set forth therein. Allmerica is without knowledge or
12 information sufficient to form a belief as to the truth or accuracy of the remaining allegations
13 contained therein and, therefore, denies the same.

14 57. Answering Paragraph 83, Allmerica denies the allegations therein
15 contained.

16 58. Answering Paragraph 84, Allmerica denies the allegations therein
17 contained.

18 59. Answering Paragraph 85, Allmerica denies the allegations therein
19 contained.

20 60. Answering Paragraph 86, Allmerica admits that there was deposition
21 testimony; the record speaks for itself. Except as expressly admitted, Allmerica denies the
22 allegations contained therein.

23 61. Answering Paragraph 87, Allmerica admits that there was deposition
24 testimony; the record speaks for itself. Except as expressly admitted Allmerica denies the
25 allegations contained therein.

26 62. Answering Paragraph 88, Allmerica denies the allegations contained
27 therein.

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1 63. Answering Paragraph 89, Allmerica admits that there were court
2 proceedings and a record was made; the record speaks for itself. Except as expressly
3 admitted, Allmerica denies the allegations contained therein.

4 64. Answering Paragraph 90, Allmerica admits that there were court
5 proceedings and a record was made; the record speaks for itself. Except as expressly
6 admitted, Allmerica denies the allegations contained therein.

7 65. Answering Paragraph 91, Allmerica denies the allegations contained
8 therein.

9 66. Answering Paragraph 92, Allmerica admits that medical reports were
10 made in 1993 but that the summaries alleged are incomplete and therefore flawed. For this
11 reason, Allmerica denies the allegations contained therein.

12 67. Answering Paragraph 93, Allmerica denies the allegations contained
13 therein.

14 68. Answering Paragraph 94, Allmerica denies the allegations contained
15 therein.

16 69. Answering Paragraph 95, Allmerica admits that there were court
17 proceedings and a record was made; the record speaks for itself. Except as expressly
18 admitted, Allmerica denies the allegations contained therein.

19 70. Answering Paragraph 96, Allmerica denies the allegations contained
20 therein.

21 70. Answering Paragraph 97, Allmerica denies the allegations contained
22 therein.

23 71. Answering Paragraph 98, Allmerica denies the allegations contained
24 therein.

25 72. Answering Paragraph 99, Allmerica denies the allegations contained
26 therein.

27 73. Answering Paragraph 100, Allmerica denies the allegations contained
28 therein.

1 74. Answering Paragraph 101, Allmerica denies the allegations contained
2 therein.

3 75. Answering Paragraph 102, Allmerica admits that there were court
4 proceedings and a deposition of Kwasniak; the record speaks for itself. Except as expressly
5 admitted, Allmerica denies the allegations contained therein.

6 76. Answering Paragraph 103, Allmerica denies the allegations contained
7 therein.

8 77. Answering Paragraph 104, Allmerica denies the allegations contained
9 therein.

10 78. Answering Paragraph 105, Allmerica denies the allegations contained
11 therein.

12 79. Answering Paragraph 106, Allmerica denies the allegations contained
13 therein.

14 80. Answering Paragraph 107, Allmerica denies the allegations contained
15 therein.

16 81. Answering Paragraph 108, Allmerica denies the allegations contained
17 therein.

18 82. Answering Paragraph 109, Allmerica denies the allegations contained
19 therein.

20 83. Answering Paragraph 110, Allmerica denies the allegations contained
21 therein.

22 84. Answering Paragraph 111, Allmerica denies the allegations contained
23 therein.

24 85. Answering Paragraph 112, Allmerica admits that it must conduct an
25 impartial investigation. The record speaks for itself as to what Judge Walker found. Except
26 as expressly admitted, Allmerica denies the allegations contained therein.

27 86. Answering Paragraph 113, Allmerica denies the allegations contained
28 therein.

1 87. Answering Paragraph 114, Allmerica is without knowledge or
2 information sufficient to form a belief as to the truth or accuracy of the allegations contained
3 therein and, therefore, denies the same.

4 88. Answering Paragraph 115, Allmerica denies the allegations contained
5 therein.

6 89. Answering Paragraph 116, Allmerica denies the allegations contained
7 therein.

8 90. Answering Paragraph 117, Allmerica denies the allegations contained
9 therein.

10 91. Answering Paragraph 118, Allmerica denies the allegations contained
11 therein.

12 92. Answering Paragraph 119, Allmerica states that the court filings speak
13 for themselves. Except as contained in the court filings, Allmerica denies the allegations
14 contained therein.

15 93. Answering Paragraph 120, Allmerica denies the allegations contained
16 therein.

17 94. Answering Paragraph 121, Allmerica cannot know what Dalessio
18 claims to have learned even if what he claims to have learned is false. As such, Allmerica is
19 without knowledge or information sufficient to form a belief as to the truth or accuracy of the
20 allegations contained therein and, therefore, denies the same.

21 95. Answering Paragraph 122, Allmerica denies the allegations contained
22 therein.

23 96. Answering Paragraph 123, Allmerica states that the court filings speak
24 for themselves. Except as contained in the court filings, Allmerica denies the allegations
25 contained therein.

26 97. Answering Paragraph 124, Allmerica states that the court record
27 speaks for itself. Except as contained in the record, Allmerica denies the allegations
28 contained therein.

1 98. Answering Paragraph 125, Allmerica states that the court record
2 speaks for itself. Except as contained in the record, Allmerica denies the allegations
3 contained therein.

4 99. Answering Paragraph 126, Allmerica states that the court record
5 speaks for itself. Except as contained in the record, Allmerica denies the allegations
6 contained therein.

7 100. Answering Paragraph 127, Allmerica states that the court record
8 speaks for itself. Except as contained in the record, Allmerica is without knowledge or
9 information sufficient to form a belief as to the truth or accuracy of the allegations contained
10 therein and, therefore, denies the same.

11 101. Answering Paragraph 128, Allmerica states that the court filings speak
12 for themselves. Except as contained in the court filings, Allmerica denies the allegations
13 contained therein.

14 102. Answering Paragraph 129, Allmerica states that the court filings speak
15 for themselves. Except as contained in the court filings, Allmerica denies the allegations
16 contained therein.

17 103. Answering Paragraph 130, Allmerica denies the allegations contained
18 therein.

19 104. Answering Paragraph 131, Allmerica denies the allegations contained
20 therein.

21 105. Answering Paragraph 132, Allmerica denies the allegations contained
22 therein.

23 106. Answering Paragraph 133, Allmerica states that the terms of the policy
24 speak for themselves and that Allmerica acted according to the terms of the policy. Except
25 as expressly admitted, Allmerica denies the allegations contained therein.

26 107. Answering Paragraph 134, Allmerica denies the allegations contained
27 therein.

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1 108. Answering Paragraph 135, Allmerica admits that in 1990 Dalessio
2 claimed that the two-year contestable period had run. Except as expressly admitted,
3 Allmerica denies the allegations contained therein.

4 109. Answering Paragraph 136, Allmerica states that the policy speaks for
5 itself. Except as expressly admitted, Allmerica denies the allegations contained therein.

6 110. Answering Paragraph 137, Allmerica denies the allegations contained
7 therein.

8 111. Answering Paragraph 138, Allmerica denies the allegations contained
9 therein.

10 112. Answering Paragraph 139, Allmerica denies the allegations contained
11 therein.

12 113. Answering Paragraph 140, Allmerica states that the record speaks for
13 itself. Except as expressly admitted, Allmerica denies the allegations contained therein.

14 114. Answering Paragraph 141, Allmerica states that the policy speaks for
15 itself. Except as expressly admitted, Allmerica denies the allegations contained therein.

16 115. Answering Paragraph 138, Allmerica denies the allegations contained
17 therein.

18 **Affirmative Defenses**

19 **First Affirmative Defense**

20 AS AND FOR A FIRST, SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE
21 COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that none of the
22 alleged causes of action therein state facts sufficient to constitute a cause of action against
23 Allmerica

24 **Second Affirmative Defense**

25 AS AND FOR A SECOND SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE
26 COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio has
27 failed to mitigate his alleged damages, if any.

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Third Affirmative Defense

AS AND FOR A THIRD SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's Counterclaim and each cause of action thereof is barred by the applicable provisions of the California *Code of Civil Procedure on Time of Commencing Actions* including, but not limited to, § 337(1), § 338(d) and § 340.

Fourth Affirmative Defense

AS AND FOR A FOURTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's claims are barred in whole or in part to the extent that Dalessio's own conduct or fault caused or contributed to the claims and/or damages alleged in the Counterclaim on file herein.

Fifth Affirmative Defense

AS AND FOR A FIFTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that this action is contrary to the terms of the Settlement Agreement and is therefore barred.

Sixth Affirmative Defense

AS AND FOR A SIXTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that it has performed or has attempted to perform all of its promises, contractual obligations and duties owed to Dalessio.

Seventh Affirmative Defense

AS AND FOR A SEVENTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that its actions with respect to Dalessio were reasonable under the law, taken in good faith and in accordance with all express terms of any contracts between them.

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Eighth Affirmative Defense

AS AND FOR A EIGHTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's claims are barred by the doctrine of laches.

Ninth Affirmative Defense

AS AND FOR A NINTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's claims are barred by the doctrine of estoppel.

Tenth Affirmative Defense

AS AND FOR A TENTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's claims are barred by the doctrine of waiver.

Eleventh Affirmative Defense

AS AND FOR A ELEVENTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that the Dalessio's claims are barred in whole or in part to the extent that Dalessio has failed to perform all of his obligations under the contract.

Twelfth Affirmative Defense

AS AND FOR A TWELFTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that said Counterclaim is in bad faith, is designed only for the intention of avoiding the payment by Dalessio of amounts owed under the contract and therefore subjects Dalessio to Rule 11 sanctions.

Thirteenth Affirmative Defense

AS AND FOR A THIRTEENTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's Counterclaim, and each cause of action thereof, is barred and/or limited by virtue of the terms and conditions of the Settlement Agreement signed by Dalessio and Allmerica.

Fourteenth Affirmative Defense

AS AND FOR A FOURTEENTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's allegations about the claims handling, Dalessio's disability, and actions of Allmerica were already adjudicated to a jury verdict and final judgment and as such are subject to and barred by res judicata and/or collateral estoppel.

Fifteenth Affirmative Defense

AS AND FOR A FIFTEENTH THIRTEENTH SEPARATE AND DISTINCT ANSWER AND DEFENSE TO THE COUNTERCLAIM OF COUNTER-CLAIMANTS ON FILE HEREIN, Allmerica alleges that Dalessio's allegations about Court rulings are already final and not appealed timely and as such are subject to and barred by res judicata and/or collateral estoppel.

Prayer

WHEREFORE, defendants pray for judgment, as follows:

1. That Dalessio take nothing by reason of his Counterclaim on file herein;
2. That Allmerica have and recover its costs of suit incurred herein;
3. That Allmerica have and recover its attorney fees incurred herein;

and,

4. For such other and further relief as this Court may deem to be just and proper in the premise.

DATED: June 16th, 2008

SHANE & TAITZ

By: /s/ David R. Shane

David R. Shane
Attorneys for Plaintiff/Counter-
Defendant COMMONWEALTH
ANNUITY AND LIFE INSURANCE
COMPANY f/k/a ALLMERICA
FINANCIAL LIFE INSURANCE
AND ANNUITY CO.

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4 **PROOF OF SERVICE BY MAIL**

5 **Commonwealth Annuity, etc. vs. Dalessio, et al.**

6
7 I declare that I am employed in the County of Marin, State of California. I
8 am over eighteen years and not a party to the within cause; my business address is Shane
& Taitz, 1000 Drakes Landing Road, Suite 200, 2nd Floor, Greenbrae, California 94904-3027.

9 On June 18, 2008, I served upon the interested party/parties hereto the
10 within document, described as:

11 **Answer [f Commonwealth Annuity and**
12 **Life Insurance Company f/k/a Allmerica**
13 **Financial Life Insurance and Annuity Company]**
to Counterclaimv [of John Dalessio,
14 **Rita Dalessio and the Dalessio Family (2003) Trust]**

15 by enclosing said document in a sealed envelope at Greenbrae, California. I am readily
16 familiar with the firm's practice of collection and processing of items for mailing. Under
17 that practice, each item is deposited with the United States Postal Service on that same
18 day with postage thereon fully prepaid at Greenbrae, California, during the ordinary
19 course of business. I am aware that on motion of the party served, service is presumed
invalid if the postal cancellation/meter date is more than one day after date of deposit for
mailing in affidavit. The item mailed is addressed, as follows:

20
21 I declare under penalty of perjury of the laws of the State of California that
the foregoing is true and correct.

22 This declaration was executed on June 18th, 2008 at Greenbrae, California.

23
24 /s/ Molly B. Libbey

25 Molly B. Libbey